



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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**Order Instituting Investigation to
Consider Policies to Achieve the
Commission's Conservation
Objectives for Class A Water Utilities.**

Investigation 07-01-022

(Filed January 11, 2007)

Application 06-09-006

(Filed September 6, 2006)

Application 06-10-026

(Filed October 23, 2006)

Application 06-11-009

(Filed November 20, 2006)

Application 06-11-010

(Filed November 22, 2006)

Application 07-03-019

(Filed March 19, 2007)

And Related Matters.

**JOINT RESPONSE OF DIVISION OF RATEPAYER ADVOCATES
AND SAN JOSE WATER COMPANY (U 168 W) TO
CONSUMER FEDERATION OF CALIFORNIA'S MOTION
FOR LEAVE TO FILE CORRECTIONS TO COMMENTS**

February 26, 2008

I. INTRODUCTION

On November 14, 2007, the Division of Ratepayer Advocates (DRA) and San Jose Water Company (SJWC) filed their Settlement Agreement, resolving conservation rate design and revenue adjustment mechanism issues between the two parties. On December 13, 2007, the Consumer Federation of California (CFC) filed its Comments on the Settlement. In those Comments, CFC urges the Commission to reject the Settlement “because the rates proposed therein provide absolutely no conservation price signal.” CFC Comments at 2. CFC devotes the majority of its Comments to discussing the terms of the Settlement.

CFC also proposes, however, its own “alternative rate structure” that includes an additional tier. DRA and SJWC filed a joint reply to CFC’s comments, addressing, among other things, the errors and shortcomings in CFC’s alternative rate structure. Now, two months after it first submitted its alternative rate structure, CFC files its motion to “correct” its rate design. CFC states that the proposed “corrected comments” are directed only to making “mathematical corrections” to its alternative rate design. For the reasons set forth below, the Commission should not grant CFC leave to file its so-called “Corrected Comments.”

To begin, the proposed corrections go beyond CFC’s alternative rate design, into CFC’s analysis of the terms of the Settlement. Further, CFC actually

proposes an entirely new rate design. CFC's corrections are not simply "numerical corrections" to its prior rate design. Moreover, this new rate design from CFC is as flawed as its first proposed rate design. For these reasons, CFC's motion should be denied.

II. THE COMMISSION SHOULD DENY CFC'S MOTION TO "CORRECT" ITS COMMENTS.

CFC states in its motion that it misread a "principal document" that it had used in "developing some of the numbers used in its Comments" on the Settlement. CFC does not identify this document, nor describe the nature of the mistake it made. CFC simply states that in order for the Commission to have a "clear record" CFC should be allowed to correct its mistakes.

In its proposed "Corrected Comments," CFC makes changes to most, if not all, of the numbers on pages 11, 13, 16 and 17 of its comments -- the section of its comments where it analyzes the rate design proposed by DRA and SJWC in the Settlement. No basis is provided by CFC to understand why these changes are proposed now, or to determine if the new numbers are more accurate than CFC's last set of numbers. At this late date, neither DRA, SJWC, nor the Commission should not have to begin anew an analysis of CFC's criticism of the terms of the Settlement.

CFC then modifies its “alternative rate structure,” beginning on page 18 of its proposed comments. Rather than make simple corrections to numbers, it is clear from looking at the red-lined document that CFC has completely altered its alternative rate design, deleted certain arguments and added new arguments in support of its new rate design.

A. *CFC Is Proposing A New Rate Design, Not Merely “Correcting” Its Comments.*

Despite CFC’s own claims that, in requesting adoption of the conservation rate design Settlement, SJWC and DRA have allegedly failed to explain many elements of that Settlement, CFC itself fails to even identify the “misread” data, or explain how its current understanding of that data requires a “correction.” In fact, DRA and SJWC’s review of CFC’s proposed “corrected” Comments reveals that CFC is essentially proposing an entirely new rate design. Table 1 (below) compares CFC’s originally-proposed rate design to the rate design proposed in CFC’s “corrected” Comments. CFC’s new rate design has different tier breakpoints and significantly different quantity rates that will have substantially different effects on ratepayers’ bills, on consumption, and on SJWC’s revenues.

Table 1

CFC's Original 3 tier Rate Design for SJWC		CFC's New 3 tier Rate Design for SJWC	
<u>Tiers</u>	<u>Rates</u>	<u>Tiers</u>	<u>Rates</u>
<10 ccf	\$1.900	<10 ccf	\$1.00
10-20 ccf	\$2.600	10-40 ccf	\$2.17
>20 ccf	\$4.800	>40 ccf	\$2.30

As can be seen, CFC has greatly broadened the reach of the second tier, and has greatly decreased the rates for each of its three proposed tiers. DRA and SJWC therefore strongly disagree with CFC's characterization that CFC has merely "corrected" its original rate design. In allegedly seeking "numerical corrections" to its Comments, CFC implies that its amendments are purely ministerial. A ministerial correction could be requested if, for example, a number in a data set is wrong or "misread," and modifications must be made because different calculations now result directly from using the "corrected" number. This is not what CFC proposes.

Instead, while CFC has not identified the "misread" document, it appears that CFC has developed an entirely new rate design in the guise of making minor "corrections." Because CFC's Motion requests "corrections" to its Comments, rather than the submission of a new rate design, CFC's Motion is erroneous on its face and should be rejected. If CFC is really seeking to amend its Comments to propose a new rate design, CFC should be required to submit the appropriate

motion and provide the basis for requiring parties and the Commission to litigate a new rate design.

B. CFC Had Ample Opportunity To Make Its Case, And The Parties Should Not Be Required To Analyze A New Rate Design.

CFC has waited over eight weeks to seek modifications to its Comments. Prior to the submission of its initial Comments, CFC propounded data requests regarding the proposed conservation rates in the Settlement on DRA and SJWC, and received responses. On January 18, 2008, SJWC and DRA filed their Reply Comments to CFC's Comments, giving CFC an opportunity to issue further data requests or seek informal clarification. While a subsequent discussion with DRA and SJWC appears to have triggered the realization by CFC that certain data had been misread, CFC provided no indication that it would re-file its Comments with a new rate design.

CFC has had ample opportunity to analyze the conservation rate designs in the proposed Settlement, as well as the data underlying that proposal. CFC has fully participated in this proceeding and has been afforded both procedural and substantive due process. Furthermore, a full analysis of CFC's new rate design would require DRA, SJWC, and the Commission to commit significant time and resources. If the Commission deigns to treat CFC's Motion to "correct"

its Comments as instead a Motion to substantively “amend” its Comments, DRA and SJWC strongly urge the Commission to conclude that neither due process nor fairness require that CFC’s Motion be granted.

C. *CFC’s New Rate Design Is Fatally Flawed And Should Not Be Considered An Alternative Rate Design.*

While CFC’s Motion should be denied because of the irregular procedure it employed to bring forth its “corrections,” as discussed above, CFC’s request to submit a new alternate “rate design” for the Commission’s consideration should also be denied from a substantive perspective. The Parties’ preliminary review of CFC’s new rate design reveals that it is fatally flawed in that the proposed rates would result in an under-collection of SJWC’s revenues by over \$20 million.¹

In developing a conservation rate proposal, it is necessary to recover the same revenue requirement that the Commission, in earlier proceedings, has already established for the company. As SJWC and DRA explained in their Reply Comments, the first rate design that CFC proposed for SJWC would have

¹ The Parties estimate that, under CFC’s new proposed rates, SJWC would collect only \$56 million of the \$77 million in adopted quantity charge revenues.

resulted in a significant over-collection of revenue.² CFC has now proposed a rate design that would significantly under-collect SJWC's revenue requirement.

This OII is designed to be revenue neutral. The purpose of the new rate design is to foster conservation, not change the already litigated revenue requirements of the utilities. Phase 1 of the OII is not considering any changes to a company's revenue requirement. Thus, any rate design modifications proposed in this proceeding must be designed to collect the company's authorized revenue requirement – no more, and no less.

Because revenue neutrality is a fundamental criterion for any price-based conservation measures proposed in this proceeding, the Commission should make it clear that a conservation rate design proposal that is not revenue neutral will not be considered as a viable proposal in this proceeding. The opposite criterion would be nonsensical. For example, in order to undertake a basic analysis of a proposed tiered rate design that over- or under-collects revenues, that over- or under-collection of revenues must be “corrected” in some manner. This could be approached in various ways, such as by changing the quantity rates, changing the consumption blocks, and/or shifting costs between the meter and the quantity charge. To the extent that such modifications result in revenue neutrality, the modified rate design must then be analyzed against several

² Reply Comments of San Jose Water Company and the Division of Ratepayer Advocates to Comments on Settlement Agreement (1/18/08) at 9-10.

parameters, such as whether the new rates would result in rate shock to any customer group, cause particular harm to low-income customers, or provide an effective conservation pricing signal. In essence, the attempt to “correct” and then analyze a rate design that is not, at the outset, revenue neutral would ultimately amount to the development of a completely new rate design.

Finally, if CFC’s goal is to send stronger conservation pricing signals to SJWC’s ratepayers than those proposed in the Settlement, CFC’s new rate design fails. For example, looking at just one simple parameter for analyzing conservation rates, it appears that CFC’s newly proposed rates would charge only 4.29% of all residential customers higher quantity rates than the current quantity rate, as compared to 41.73% of residential customers that would be charged higher quantity rates in the rate design of the proposed Settlement. Table 2 provides this comparison, with the shaded cells identifying the percentages of residential customers with higher-than-current quantity rates:

Table 2

CFC's New Proposed Rate Design				DRA SJWC Settlement Rate Design				
Tier Consump tion (ccf)	Current Rates	Proposed Rates	% of customers	Meter Size	Tier Consump tion (ccf)	Current Rates	Proposed Rates	% of customers
<10	\$2.17	\$1.00	45.19%	<1.5"	<13	\$2.17	\$2.10	57.77%
10-40	\$2.17	\$2.17	50.52%		>13	\$2.17	\$2.31	41.66%
>40	\$2.17	\$2.30	4.29%	1.5" and 2"	<26	\$2.17	\$2.10	0.50%
					>26	\$2.17	\$2.31	0.07%
			100.00%					100.00%

In sum, not only do CFC's proposed rates fail to meet the fundamental criterion of revenue neutrality, a preliminary analysis of those rates calls into question whether CFC's new rate design would accomplish its intended goal of increasing conservation signals. These substantive flaws in CFC's new rate design likely only scratch the surface. Conducting a complete analysis of CFC's new rate design, however, would require extensive review and the use of significant resources, by both the parties and Commission staff. The Commission should therefore reject CFC's second attempt to propose alternate conservation rates in a rate design that is fatally flawed.

III. CONCLUSION

For all of the foregoing reasons, SJWC and DRA respectfully submit that the Commission should deny CFC's motion for leave to file its "corrected" comments on the Settlement.

Dated: February 26, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES AND SAN JOSE WATER COMPANY (U 168 W) TO CONSUMER FEDERATION OF CALIFORNIA’S MOTION FOR LEAVE TO FILE CORRECTIONS TO COMMENTS**” in I.07-01-022 by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses, if any.

Executed on **February 26, 2007** at San Francisco, California.

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